



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Wittenberg Auto Sales

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Case No.: TR-01-0043

**FINAL DECISION**

On August 15, 2001, Walter Bartus filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of John P. Kendall, Jr., d/b/a Wittenberg Auto Sales. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. The undersigned Administrative Law Judge issued a Preliminary Determination as required by Wis. Admin. Code § Trans 140.26(5)(a) on November 16, 2001. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Walter Bartus  
2611 Shepherd Lane  
Schofield, WI 54476

John P. Kendall, Jr., d/b/a Wittenberg Auto Sales  
203 East Grand Avenue  
Wittenberg, WI 54494

Old Republic Insurance Company  
P. O. Box 941  
Brookfield, WI 53008-0543

**FINDINGS OF FACT**

1. John P. Kendall, Jr., d/b/a Wittenberg Auto Sales, (Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 203 East Grand Avenue, Wittenberg, Wisconsin. The Dealer apparently closed his business on July 13, 2001.

2. The Dealer had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5)(a) in force for the period from October 18, 2000 to October 18, 2002. (Bond No. MSA1162245 from Old Republic Insurance Company.)

3. On May 14, 2001, Walter Bartus loaned the Dealer \$5,000.00. According to the terms of a promissory note Mr. Bartus submitted to the Department, Mr. Kendall agreed to repay Mr. Bartus \$7,000.00 on July 14, 2001. (This computes to an interest rate of 240% APR.)

4. Apparently, on July 14, 2001, the Dealer did not make the agreed loan repayment. On August 15, 2001, Mr. Bartus filed a claim against the Dealer's surety bond. In his bond claim, Mr. Bartus alleges that the Dealer gave him a security interest in a vehicle. (As support for this allegation, Mr. Bartus submitted a copy of a MV-11 form listing Walter Bartus as a secured party. However, the majority of the copy is unreadable, including the name of the vehicle owner. There is also no evidence that the MV-11 form was ever filed with the Department of Transportation.)

5. Assuming the copies of documents submitted by Mr. Bartus are authentic, they do not form the basis of an allowable bond claim. Wis. Admin. Code §§ 140.21(2)(c) and (f) expressly disallows this claim. Wis. Admin. Code § 140.21(2)(c) disallows:

Any claim arising from activities of the licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for rent, mortgage payments, wages, commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle.

Wis. Admin. Code § 140.21(2)(f) disallows:

Any claim by a financial institution or secured party.

The intent of the surety bond required for motor vehicle dealers is to protect consumers, not individuals or institutions that lend money to motor vehicle dealers. Mr. Bartus' claim against the surety bond is not allowable.

7. The bond claim was filed within three years of the ending date of the period the Old Republic Insurance Company bond was in effect and is, therefore, a timely claim.

8. The loss sustained by Walter Bartus was not caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

## DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin. Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats., (1999-2000)*].

. . . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. The loss claimed by Mr. Bartus did not result from an act by the Dealer that violated any of the listed sections. Moreover, the claim filed by Mr. Bartus is expressly disallowed pursuant to Wis. Admin. Code §§ 140.21(2)(c) and (f).

## CONCLUSIONS OF LAW

1. Walter Bartus' claim arose on July 14, 2001, the date John P. Kendall, Jr., d/b/a Wittenberg Auto Sales, failed to repay money lent to it by Mr. Bartus. The surety bond issued to John P. Kendall, Jr., d/b/a Wittenberg Auto Sales, by Old Republic Insurance Company covers a one-year period commencing on October 18, 2000. The claim arose during the period covered by the surety bond.

2. Walter Bartus filed a claim against the motor vehicle dealer bond of John P. Kendall, Jr., d/b/a Wittenberg Auto Sales, on August 15, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. The claim filed by Walter Bartus seeks to recover money lent by him to John P. Kendall, Jr., d/b/a Wittenberg Auto Sales, and interest on the loan. The claim is not an allowable claim pursuant to Wis. Admin. Code § Trans 140.21(1) and it is expressly disallowed pursuant to Wis. Admin. Code §§ Trans 140.21(1)(2)(c) and (f).

4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Walter Bartus against the motor vehicle dealer bond of John P. Kendall, Jr., d/b/a Wittenberg Auto Sales, is DENIED.

Dated at Madison, Wisconsin on January 10, 2002.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Mark J. Kaiser  
Administrative Law Judge

**NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.